

ESTTA Tracking number: **ESTTA454022**

Filing date: **01/31/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91202271
Party	Defendant Rick Flayler
Correspondence Address	RICK FLAYLER 83 MOSSWOOD CT LIVERMORE, CA 94551-3963 hizen@comcast.net
Submission	Motion to Amend Application
Filer's Name	Pollie Gautsch
Filer's e-mail	pollie@gandalegal.com
Signature	/polliegautsch/
Date	01/31/2012
Attachments	Dragons Brew- Amendment final.pdf (2 pages)(78853 bytes) Settlement Agreement Dragons Brew TM.pdf (3 pages)(146406 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**In the Matter of Application Serial no. 85/243727, Int'l Class 32
Filed 02/16/2011- and published in the *Official Gazette* 06/28/2011**

Desnoes & Geddes Limited)	
)	
)	Opposition No. 91202271
Opposer,)	
)	
-against-)	
)	
Rick Flayer)	
)	
)	
Applicant.)	
)	

MOTION TO AMEND APPLICATION

Commissioner for Trademarks
Attention Trial and Appeal Board
PO Box 1451
Alexandria, VA 22313-1451

Dear Sir/Madam:

The current goods for application number 85/243727 are listed as Class 32 “Energy Drinks.” The Opposer and Applicant have agreed to a Settlement Agreement wherein the Opposer consents to a revised description of the goods as “ready-to-drink all natural brewed tea product.” The Opposer shall provide its consent to the amendment, and, provided the Patent and Trademark Office accepts the amendment in its entirety, shall withdraw its opposition to the application. Therefore, the undersigned, Rick Flayer (hereinafter “Applicant”) hereby amends application number 85/243727 as follows:

Class 30: “ready-to-drink all-natural brewed tea product”

Pollie Gautsch

BY: _____

Pollie A. Gautsch
2033 San Elijo #201
Cardiff, CA 92007
(858) 481-1300
Attorneys for Applicant

SETTLEMENT AGREEMENT

THE PARTIES to this agreement (the "Agreement") are Desnoes & Geddes Limited, a Jamaican corporation with an address of 214 Spanish Town Road, Kingston 11, Jamaica ("DGL") and Rick Flayler, a citizen of California residing at 83 Mosswood Court, Livermore, California 94551-3963 ("Flayler"). The effective date of this Agreement (the "Effective Date") is the date of complete execution.

WHEREAS, DGL is the owner of various trademarks consisting of or including DRAGON, which it has used in the U.S. in connection with alcoholic beverages since at least 1978, and

WHEREAS, Flayler filed U.S. Trademark Application Serial No. 85/243,727 (the "Application") with the U.S. Patent & Trademark Office ("PTO") on February 16, 2011 to register DRAGON'S BREW for energy drinks (the "Application Goods") in International Class 32 on an intent-to-use basis; and

WHEREAS, on October 26, 2011 DGL timely filed Opposition No. 91/202,271 (the "Opposition") with the PTO opposing the Application; and

WHEREAS, DGL and Flayler (each individually a "Party" and collectively, the "Parties") wish to resolve the issues between them arising out of or concerning the Application and the Opposition;

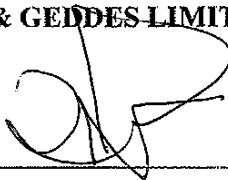
NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Within seven (7) days after the Effective Date, Flayler shall seek to amend the Application by submitting an amendment to the PTO (the "Amendment") seeking to change (i) the class of the Application from International Class 32 to International Class 30, and (ii) the description of goods from "energy drinks" to "[ready-to-drink all-natural brewed tea product]." DGL shall provide its consent to the Amendment, and, provided the PTO accepts the amendment in its entirety, shall withdraw its opposition to the Application as amended.
2. In the event the PTO does not accept the Amendment in its entirety, within seven (7) days after the refusal of the Amendment Flayler shall abandon the Application with prejudice, and thereafter may file a new application to register DRAGON'S BREW for "[ready-to-drink all-natural brewed tea product]" in International Class 30, which application DGL shall not oppose.
3. As of the Effective Date, Flayler shall:
 - A. Not register or apply to register the mark DRAGON'S BREW, or any other mark consisting of or including the word DRAGON, for alcoholic beverages or any goods or services associated with alcoholic beverages.

- B. Permanently refrain from any use of the mark DRAGON'S BREW, or any other mark consisting of or including the word DRAGON, for alcoholic beverages or any goods or services associated with alcoholic beverages.
4. As of the Effective Date, Flayler shall not object to, challenge, or interfere with DGL's registration, use, or exploitation of any mark that consists of or includes DRAGON in connection with any alcoholic beverages.
5. This Agreement and its operation shall be restricted in scope and effect to the United States.
6. All rights not expressly granted herein are reserved.
7. The terms of this Agreement have been negotiated at arm's length with all Parties and their counsel, if any, having input into the specific terms. As a result, the rule of "interpretation against the drafter" shall not apply in any dispute over the interpretation of the terms of this Agreement.
8. This Agreement, including its Whereas clauses (which are expressly incorporated herein), constitutes the entire agreement and understanding between the Parties and supersedes and replaces all prior and contemporaneous negotiations and any agreements, proposed agreements or understandings with respect to the subject matter hereof.
9. Each Party represents and warrants that it has carefully reviewed this Agreement, has obtained or knowingly and voluntarily chosen not to obtain advice of counsel with respect to this Agreement, understands its terms, and has relied wholly on its own judgment and knowledge and has not been influenced to any extent whatsoever in making this Agreement by any representations or statements made by the other Party or anyone acting on behalf of the other Party other than those contained herein.
10. Each Party agrees to promptly execute and deliver to the other Party any and all documents, papers or writings, and to take any and all steps necessary or appropriate to consummate this Agreement and each and every provision hereof. Each Party shall bear its own costs incident to compliance with this Agreement.
11. This Agreement and all obligations contained herein shall be binding upon and inure to the benefit of the Parties and their respective heirs, successors, and/or assigns.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have hereunto set their hands as of the date below.

DESNOES & GEDDES LIMITED



Name: Renzo Gonet

Title: MD Red Strake

Date: 1/26/12

RICK FLAYLER



Date: 1/17/12